

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ISRAEL TAPIA,
Appellant.

No. 2 CA-CR 2015-0264
Filed December 28, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Cochise County

No. CR201400581

The Honorable James L. Conlogue, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

Janelle A. Mc Eachern, Chandler
Counsel for Appellant

STATE v. TAPIA
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Israel Tapia appeals from the trial court’s June 2015 order revoking his probation and sentencing him to the presumptive, 3.5-year term of imprisonment with credit for 191 days’ presentence incarceration, to be followed by a four-year term of probation. As part of the sentencing, the court also entered a criminal restitution order (CRO) directing Tapia to pay \$6,099 in restitution, plus other fines, fees, surcharges, and assessments. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating she has reviewed the record and has found “no arguable question of law that is not frivolous.” Counsel has asked us to search the record for fundamental error. Tapia has not filed a supplemental brief. We affirm in part and vacate in part.

¶2 On appeal, we view the evidence in the light most favorable to upholding the trial court’s findings that Tapia had committed multiple violations of his conditions of probation, as alleged in the petition to revoke. See *State v. Vaughn*, 217 Ariz. 518, n.2, 176 P.3d 716, 717 n.2 (App. 2008). So viewed, the evidence established that, pursuant to a 2015 plea agreement, Tapia was convicted of theft for knowingly controlling the property of another and weapons misconduct for possessing a deadly weapon while being a prohibited possessor. See A.R.S. §§ 13-1802(A)(5), 13-3102(A)(4). In March 2015, the court suspended the imposition of sentence, placed Tapia on consecutive terms of supervised probation totaling nine years, and ordered him to pay \$6,099 in restitution.

STATE v. TAPIA
Decision of the Court

¶3 Less than two months later, the probation department filed a petition to revoke Tapia’s probation, alleging he had violated multiple conditions of his probation. Following a contested revocation hearing held in June 2015, the trial court found a preponderance of the evidence established that Tapia had committed five violations of his probationary terms.

¶4 A probation violation “must be established by a preponderance of the evidence,” Ariz. R. Crim. P. 27.8(b)(3), and we will uphold a trial court’s finding of a violation “unless it is arbitrary or unsupported by any theory of evidence,” *State v. Moore*, 125 Ariz. 305, 306, 609 P.2d 575, 576 (1980). The evidence presented at the violation hearing established Tapia failed to: abide by the requirement he maintain a crime-free lifestyle and obey all laws, to wit, by committing endangerment, excessive speeding, reckless driving, and aggressive driving (condition 1); and not possess or use illegal drugs, specifically, methamphetamine (condition 12). See A.R.S. §§ 13-1201(A), 13-3407(A)(1), 28-693(A), 28-695(A)(1), 28-701.02(A)(3).

¶5 The trial court acted within its discretion by revoking Tapia’s probation and imposing a sentence. See Ariz. R. Crim. P. 27.8(c)(2) (upon determination defendant violated condition of probation, “court may revoke, modify or continue probation[and i]f probation is revoked, the court shall pronounce sentence”). And, the sentence imposed upon the revocation of Tapia’s probation was within the range authorized by law. See A.R.S. § 13-702(D).

¶6 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found one such error. At sentencing, the trial court ordered restitution and fines, fees, surcharges, and assessments reduced to a CRO. “[T]he CRO is unauthorized except to the extent it pertains to restitution.” *State v. Veloz*, 236 Ariz. 532, ¶ 20, 342 P.3d 1272, 1278 (App. 2015); see also A.R.S. § 13-805(C)(1). Therefore, we vacate the CRO entered as to fines, fees, surcharges, and assessments, but we otherwise affirm the trial court’s findings of probation violations, its revocation of Tapia’s probation, and the sentence imposed.